

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In Re:

Simon P. Curanaj,

Debtor.

Case No. 19-23809-shl
Chapter 13

M&T Bank by its attorneys Schiller, Knapp, Lefkowitz, & Hertz, LLP, as and for its response to the Debtor's Order to Show Cause seeking to impose the automatic stay states as follows:

1. M&T Bank is the holder of a note and mortgage executed by Peter Curanaj dated July 10, 2003 in the original principal amount of \$326,350.00 and secured by property located at 4224 White Plains Rd, Bronx, New York 10466. A copy of the note and mortgage are annexed hereto as Exhibit "A".

2. Based on a default in making the monthly mortgage payments due on **August 1, 2008** and each month thereafter on or about January 22, 2009, M&T Bank commenced a foreclosure action in the Supreme Court Bronx County (the "State Court Action").

3. On or about September 6, 2016 Peter Curanaj transferred to Simon Curanaj and Peter Curanaj for no consideration. A copy of the deed is annexed hereto as Exhibit "B"

4. On or about March 4, 2014 a Judgment of Foreclosure was entered. A copy of the Judgment of Foreclosure and Sale is annexed hereto as Exhibit "C".

5. A foreclosure sale was scheduled for June 9, 2014 but cancelled as Peter Curanaj, submitted an Order to Show Cause in the State Court Action seeking to vacate the Judgment of Foreclosure and Sale. The application was denied by Order dated October 15, 2015. A copy of the State Court Order is annexed hereto as Exhibit "D".

6. A foreclosure sale was noticed for September 26, 2016.

7. On September 26, 2016, the Debtor filed for relief under Chapter 13 (Case Number 16-12700-cgm). The case was dismissed on or about April 13, 2017 for a failure to make plan payments. A copy of the PACER Docket is annexed hereto as Exhibit "E".

8. Another foreclosure sale was scheduled from June 26, 2017.

9. However, on June 23, 2017, the Debtor filed for relief under Chapter 13 (Case Number: 17-11762-cgm) thereby staying the scheduled sale. The case was dismissed by Order dated October 23, 2017. A copy of the PACER Docket is annexed hereto as Exhibit "F".

10. Another foreclosure was scheduled for January 8, 2018

11. Peter Curanaj filed an application in the State Court Action seeking an Order staying the foreclosure sale. The application was denied **with prejudice** by Order dated March 5, 2018. A copy of the Order is annexed hereto as Exhibit "G"

12. The Debtor filed a Chapter 13 on September 27, 2018 (Case Number 18-12803). The case was dismissed on January 11, 2019. Attached is the PACER as Exhibit "H". A foreclosure sale was notice for April 8, 2019

13. On April 8, 2019, the Debtor filed a Chapter 13 petition. (Bankruptcy Petition #: 19-11085-cgm). M&T filed a Proof of Claim evidencing mortgage arrears in the amount of \$534,857.53 and a payoff in the amount of 758,805.13. The case was dismissed on or about July 1, 2019. A copy of the PACER Docket is annexed hereto as Exhibit "I".

14. A foreclosure sale was noticed for October 7, 2019.

15. The Debtor filed the instant petition on October 4, 2019.

16. It is respectfully submitted that the Debtor has failed to meet his burden of proving by clear and convincing evidence that he filed the instant petition good faith, as is required to justify the imposition of a stay pursuant to section 362(c)(4)(B).

17. The subject loan remains contractually due for the August 1, 2008. After an eleven year default, multiple bankruptcy filings and state court litigation the Debtor, who is not party to the note and mortgage simply cannot be permitted to either "live rent free" or collect rental payments while starving the creditor. The Debtor's previous skeletal filings and dismissals all were calculated to delay the underlying state court proceeding and hinder the Creditor from realizing on its collateral.

18. As a non-borrower the Debtor cannot seek to modify M&T's right under the mortgage.

19. M&T continues to shoulder the cost of taxes and insurance while being paid nothing for eleven years.

WHEREFORE, for the reasons set forth hereinabove, it is respectfully requested that this Court deny the Debtor's Order to Show Cause at this time and for additional relief as this Court deems just.

Dated: October 11, 2019

**SCHILLER, KNAPP, LEFKOWITZ &
HERTZEL, LLP**

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